IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

MACA.No. 231 of 2003(C)

OPMV.851/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

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APPELLANT/PETITIONER IN O.P(MV):

SHIYAS K.V., S/O. UMMER,
KARAKKUNNEL HOUSE, KARIKODE KARA,
KARIKODU VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.K.A.HASSIM
SRI.M.I.ISMAIL

RESPONDENTS: RESPONDENTS IN O.P(MV):

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1. SAKEER, S/O. ABOOBACKER,
THANIKKAL HOUSE, KARIKODU VILLAGE,
THODUPUZHA EAST P.O.

2. PRAKASH KUMAR,
KANDATHIL PUTHEN PURAYIL HOUSE,
KADAKKATHANAM KAPPU, VAZHAKKULAM (VIA).

3. NATIONAL INSURANCE CO.LTD.,
BRANCH THODUPUZHA.

R3 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.A.C.A.No.231 of 2003

Dated, this the 9th day of October, 2007

JUDGMENT

The petitioner in O.P.(MV) No.851/1998 on the file of the Motor Accidents Claims Tribunal, Thodupuzha is the appellant. Appeal is filed by the petitioner himself complaining inadequacy of the quantum of compensation awarded to him. Appellant met with a motor vehicle accident on 13.9.1998. He was a pillion rider in a motor cycle bearing registration No.KL 7/S 5345. It was alleged that on account of the rash or negligent driving of the motor cycle he fell down and sustained injuries. He claimed an amount of Rs.70,000/- as compensation. Rider of the motor cycle did not contest. Insurer alone contested the case. Negligence alleged was denied. Quantum of compensation claimed was disputed. Tribunal found that the accident occurred due to the negligence of the rider of the motor cycle. It was also found that the appellant is entitled to get a compensation of Rs.13,700/-. Insurer was directed to pay the compensation. Dissatisfied with the quantum of compensation awarded the petitioner himself has filed this appeal.

2. Learned counsel appearing for the appellant has argued that there was traumatic amputation of right little toe through proximal phalanx and the Doctor who treated the appellant had issued a disability certificate showing that appellant is having a disability of 10%. It is argued that the appellant was aged 20 years on the date of accident and as such he is entitled to get compensation on

account of disability also.

3. Learned counsel appearing for the insurer contended that the appellant has not suffered any disability at all. It was contended that the disability certificate shows that only the tip of right little toe was amputated and there was no functional disability at all. It is argued that appellant is not entitled to get any compensation from the insurer as he was a pillion rider.

4. It is true that appellant was a pillion rider in a motor cycle. But the Insurance Company did not produce the policy. It did not raise a contention that the company has no liability to indemnify the insured. Further the Tribunal found that the insurer is liable to pay the entire amount. That finding has become final and conclusive and will operate as res judicate and as such the company cannot be allowed to raise such a contention. The next question arising for consideration is whether the appellant is entitled to get any additional compensation. Appellant was aged 20 years. It is true that amputation of little toe through proximal phalanx alone was there. It cannot be held that the appellant is not having any disability at all. So I am of the view that the Tribunal ought to have awarded at least an amount of Rs.5,000/- as compensation towards loss of amenities, etc. on account of amputation. Tribunal has awarded only Rs.1,318/- towards treatment expenses. I am of the view that the Tribunal ought to have awarded at least Rs.1,000/- more towards treatment expenses. The appellant is entitled to get additional compensation of Rs.6,000/- with 6% interest per annum from the date of petition

till the date of realisation.

In the result, appeal is allowed in part. An award is passed in favour of the appellant authorising him to recover an amount of Rs.6,000/- as additional compensation with 6% interest per annum from the date of petition till the date of realisation. Third respondent insurer is directed to deposit the additional compensation. Appellant is entitled to withdraw the entire compensation on deposit.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR,J.

M.A.C.A.No.231 of 2003

JUDGMENT

9th October, 2007.